

§ 636.212 To what extent must tradeoff decisions be documented?

When tradeoffs are performed, the source selection records must include the following:

- (a) An assessment of each offeror's ability to accomplish the technical requirements; and
- (b) A summary, matrix, or quantitative ranking, along with appropriate supporting narrative, of each technical proposal using the evaluation factors.

Subpart C—Proposal Evaluation Factors**§ 636.301 How should proposal evaluation factors be selected?**

- (a) The proposal evaluation factors and significant subfactors should be tailored to the acquisition.
- (b) Evaluation factors and significant subfactors should:
 - (1) Represent the key areas of importance and emphasis to be considered in the source selection decision; and
 - (2) Support meaningful comparison and discrimination between and among competing proposals.

§ 636.302 Are there any limitations on the selection and use of proposal evaluation factors?

- (a) The selection of the evaluation factors, significant subfactors and their relative importance are within your broad discretion subject to the following requirements:
 - (1) You must evaluate price in every source selection where construction is a significant component of the scope of work. However, where the contracting agency elects to release the final RFP and award the design-build contract before the conclusion of the NEPA process (see § 636.109), then the following requirements apply:
 - (i) It is not necessary to evaluate the total contract price;
 - (ii) Price must be considered to the extent the contract requires the contracting agency to make any payments to the design-builder for any work performed prior to the completion of the NEPA process and the contracting agency wishes to use Federal-aid highway funds for those activities;

- (iii) The evaluation of proposals and award of the contract may be based on qualitative considerations;

- (iv) If the contracting agency wishes to use Federal-aid highway funds for final design and construction, the subsequent approval of final design and construction activities will be contingent upon a finding of price reasonableness by the contracting agency;

- (v) The determination of price reasonableness for any design-build project funded with Federal-aid highway funds shall be based on at least one of the following methods:

- (A) Compliance with the applicable procurement requirements for part 172, 635, or 636, where the contractor providing the final design or construction services, or both, is a person or entity other than the design-builder;

- (B) A negotiated price determined on an open-book basis by both the design-builder and contracting agency; or

- (C) An independent estimate by the contracting agency based on the price of similar work;

- (vi) The contracting agency's finding of price reasonableness is subject to FHWA concurrence.

- (2) You must evaluate the quality of the product or service through consideration of one or more non-price evaluation factors. These factors may include (but are not limited to) such criteria as:

- (i) Compliance with solicitation requirements;

- (ii) Completion schedule (contractual incentives and disincentives for early completion may be used where appropriate); or

- (iii) Technical solutions.

- (3) At your discretion, you may evaluate past performance, technical experience and management experience (subject to § 636.303(b)).

- (b) All factors and significant subfactors that will affect contract award and their relative importance must be stated clearly in the solicitation.

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